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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

BORNSTEIN SEAFOODS, INC. a Washington  
Corporation,

Plaintiff,

vs.

CITY OF BELLINGHAM a Washington  
Municipal Corporation,

Defendant.

No. 21-cv-00022

BORNSTEIN SEAFOODS INC'S.  
COMPLAINT FOR DAMAGES AND  
DECLARATORY RELIEF

Plaintiff, for its Complaint herein, alleges:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, the Washington State Model toxics Control Act (MTCA), RCW 70A.305 *et seq.*, and the Washington

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1 Uniform Declaratory Judgment Act, RCW 7.24.010, *et seq.* to recover the costs of past and future  
2 environmental response and remediation concerning certain sediments and other property that  
3 have been impacted by the release of hazardous substances, and obtain a judicial declaration of  
4 the obligation of Defendant to pay such costs.

5 2. Defendant owns and operates a sewer and stormwater conveyance system (the  
6 Stormwater System) that discharges large volumes of contaminated water to several outfalls in  
7 Bellingham Bay, including the Bellwether Outfall along the Bellwether Peninsula and the Roeder  
8 Outfall at the head of the I & J Waterway.

9 3. Ownership and operation of the Stormwater System by Defendant dates back to  
10 the first half of the twentieth century. In the decades of such ownership and operation the  
11 Stormwater System has collected hazardous substances originating from city streets and other  
12 sources and conveyed such substances to the I & J Waterway.

13 4. Defendant has also owned and operated the Roeder Landfill and other facilities  
14 that are sources of contaminated leachate and other contamination entering the I & J Waterway.

15 5. The discharge of such contamination, especially that discharged through Roeder  
16 and Bellwether Outfalls, has caused release of material defined as hazardous substances under  
17 CERCLA and MTCA into the sediments of the I & J Waterway (the Releases).

18 6. Plaintiff has entered into an agreed order with the Washington State Department  
19 of Ecology (Agreed Order) for the purpose of providing remedial action at the I & J Waterway.

20 7. Plaintiff has incurred remedial action costs, and will incur additional remedial  
21 action costs, investigating and responding to the Releases.

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**FACTS**

16. Defendant is the owner and operator of the City of Bellingham Stormwater System.

17. Defendant has owned and operated facilities comprising the Stormwater System, or elements thereof, since prior to 1940.

18. Stormwater System facilities owned and operated by Defendant include stormwater lines, catch basins, pump stations, pipes, ditches, culverts, street gutters, detention ponds, retention ponds, infiltration devices, oil/water separators, waste water treatment plants, and more.

19. The Stormwater System collected contaminated stormwater from an area of more than 19,200 acres and drained such contaminated stormwater (City Stormwater) through various outfalls to Bellingham Bay (Baywide Drainage).

20. Areas from which City Stormwater was collected included city streets, industrial facilities, and residential properties.

21. Defendant collects fees from residents and businesses for the purpose of handling stormwater in the City.

22. City Stormwater contained hazardous substances, including but not limited to metals, petroleum, petroleum byproducts and fractions, polycyclic aromatic hydrocarbons (PAHs), bis(2-ethylhexyl)phthalate (BEP), organic compounds, polychlorinated biphenyls (PCBs), dioxin and furans.

1           23.     Subareas of Baywide Drainage drained directly to the I & J Waterway through the  
2 Roeder Outfall (Roeder Drainage) and the Bellwether Outfall.

3           24.     The Roeder Drainage encompasses more than 600 acres and includes more than  
4 1000 stormwater line segments and 700 catch basins.

5           25.     Defendant has owned and operated Stormwater System facilities within the  
6 Roeder Drainage dating back to the 1940s or earlier, causing the Releases.

7           26.     In addition to the Releases caused by conveyance of City Stormwater directly to  
8 the I & J Waterway through the Roeder and Bellwether Outfalls, hazardous substances contained  
9 in City Stormwater from Baywide Drainage has entered I & J Waterway through its mouth,  
10 resulting in further Releases.

11           27.     Between 1965 and 1974, Defendant constructed, owned and operated the Roeder  
12 Landfill in tideland south of the I & J Waterway, filling it with municipal solid waste (MSW).

13           28.     MSW contains hazardous substances including but not limited to metals,  
14 petroleum, petroleum byproducts and fractions, PAHs, BEP, organic compounds, PCBs, dioxin  
15 and furans.

16           29.     Hazardous substances contained in leachate from the Roeder Landfill has entered  
17 I & J Waterway through its mouth and groundwater, resulting in further Releases.

18           30.     Defendant has also owned and operated other facilities that have caused the  
19 Releases.

20           31.     Plaintiff has entered into an agreed order with the Washington State Department  
21 of Ecology (Agreed Order) for the purpose of providing remedial action at the I & J Waterway.

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1           32. Plaintiff has incurred costs in excess of \$500,000 associated with investigating  
2 and remediating the contamination at the I & J Waterway and carrying out the provisions of the  
3 Agreed Order through the creation of a remedial investigation, feasibility study, remedial design  
4 work, and Department of Ecology oversight costs, and will incur substantial additional remedial  
5 action costs in the future.

6                   **CLAIM FOR RELIEF UNDER COMPREHENSIVE ENVIRONMENTAL**  
7                   **RESPONSE COMPENSATION AND LIABILITY ACT**

8           33. Plaintiff realleges the allegations set forth in paragraphs 1 through 32.

9           34. Defendant is a “person” within the meaning of 42 U.S.C. § 9601(21).

10          35. The I & J Waterway is a “facility” as defined in 42 U.S.C. § 9601(9).

11          36. The buildings, equipment, pipelines, installations, and other features of the City  
12 Stormwater System including the Bellwether and Roeder Outfalls constitute a “facility” as  
13 defined in 42 U.S.C. 9601(9).

14          37. The Agreed Order is an “administrative settlement” as used in 42 U.S.C.  
15 9613(f)(3)(b).

16          38. Plaintiff has incurred cleanup costs as a part of its investigation and remediation  
17 of the I & J waterway.

18          39. Metals, BEP, organic compounds, PAHs, PCBs, dioxin, furans and other  
19 contaminants contained in the Releases are “hazardous substances” as defined in 42 U.S.C.  
20 9601(14).

21          40. Each of the Releases constitutes a “release” as defined in 42 U.S.C. 9601(22).

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1           41. Defendant is the “operator” of the Roeder and Bellwether Outfalls through which  
2 Defendant has deposited hazardous substances into the I & J Waterway.

3           42. Defendant has by contract, agreement, and otherwise arranged for the disposal  
4 and treatment of hazardous substances at and into the I & J Waterway.

5           43. Defendant has accepted hazardous substances for transport to disposal at  
6 numerous facilities including the I & J waterway and the Stormwater System.

7           44. Defendant is the owner, operator, and designer, of stormwater conveyance  
8 systems, treatment facilities, streets, roads, vehicles, maintenance equipment, and more and has  
9 through these means accepted hazardous substances for transport and treatment, and arranged for  
10 disposal of hazardous substances which have later been released into the I & J Waterway.

11           45. Plaintiff has incurred remedial action costs as a part of a cleanup that are  
12 consistent with the National Contingency Plan.

13           46. Pursuant to 42 U.S.C. § 9607(a), Plaintiff is entitled to recover from Defendant  
14 all costs and expenses it has incurred in investigating and cleaning up the I & J Waterway.

15           47. Pursuant to 42 U.S.C. § 9613(f)(3)(b), Plaintiff is entitled to contribution from  
16 Defendant for remedial action costs incurred by and imposed on Plaintiff.

17                   **CLAIM FOR RELIEF UNDER MODEL TOXICS CONTROL ACT**

18           48. Plaintiff realleges the allegations set forth in paragraphs 1 through 47

19           49. The I & J Waterway is a “facility” as defined in RCW 70A.305.020.  
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1           50.     Metals, petroleum, petroleum byproducts and fractions, PAHs, BEP, organic  
2 compounds, PCBs, dioxin, furans and other contaminants contained in the Releases are  
3 “hazardous substances” as defined in RCW 70A.305.020.

4           51.     Each of the Releases constitutes a “release” as defined in RCW 70A.305.020.

5           52.     Defendant is the current owner of contaminating facilities causing the Releases,  
6 owned and operated the contaminating facilities at the time of the Releases, arranged for disposal  
7 of hazardous substances at the I & J Waterway, and transported hazardous substances for disposal  
8 at the I & J Waterway, and is therefore strictly, jointly and severally liable for all remedial action  
9 costs incurred at or related to the I & J Waterway, as provided in RCW 70A.305.040(1)(a),(b),  
10 (c) and (d).

11           53.     Plaintiff has incurred remedial action costs consistent with the purposes and  
12 requirements of MTCA to identify and remediate the Releases of hazardous substances into the  
13 environment.

14           54.     Pursuant to RCW 70A.305.080, Plaintiff is entitled to recover from Defendant all  
15 remedial action costs and attorney fees and expenses resulting from Releases of hazardous  
16 substances at the I & J Waterway.

17                   **CLAIM FOR DECLARATORY JUDGMENT UNDER COMPREHENSIVE**  
18                   **ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT**

19           55.     Plaintiff realleges the allegations set forth in paragraphs 1 through 54.

20           56.     Plaintiff has incurred remedial action costs consistent with the National  
21 Contingency Plan and the purposes and requirements of CERCLA to identify and remediate the  
22 Releases of hazardous substances into the environment and will continue to incur such costs.

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1           57. By reason of the foregoing, an actual and justiciable controversy exists between  
2 Plaintiff and the Defendant regarding the obligation of Defendant to pay or reimburse Plaintiff for  
3 remedial action costs.

4           58. Under 42 U.S.C. 9613, 28 U.S.C. § 2201, FRCP 57, and RCW 7.24.010, *et seq.*,  
5 Plaintiff is entitled to declaratory judgment that the Defendant is obligated to pay all remedial action  
6 costs incurred or to be incurred related to contamination of the I & J Waterway.

7                   **CLAIM FOR DECLARATORY JUDGMENT UNDER MODEL TOXICS**  
8                   **CONTROL ACT**

9           59. Plaintiff realleges the allegations set forth in paragraphs 1 through 58.

10          60. Plaintiff has incurred remedial action costs consistent with the purposes and  
11 requirements of MTCA to identify and remediate the Releases of hazardous substances into the  
12 environment and will continue to incur such costs.

13          61. By reason of the foregoing, an actual and justiciable controversy exists between  
14 Plaintiff and the Defendant regarding the obligation of Defendant to pay or reimburse Plaintiff for  
15 remedial action costs.

16          62. Under RCW 70A.305 *et seq.*, 28 U.S.C. § 2201, FRCP 57, and RCW 7.24.010, *et*  
17 *seq.*, Plaintiff is entitled to declaratory judgment that the Defendant is obligated to pay all remedial  
18 action costs incurred or to be incurred related to contamination of the I & J Waterway.

19                   **PRAYER FOR RELIEF**

20          WHEREFORE, Plaintiff requests a judgment and judicial declaration that:

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- 1 a. Defendant is responsible for past and future remedial action costs incurred by  
2 Plaintiff to remediate and abate the Releases or threatened Releases of any  
3 hazardous substances at or onto the I & J Waterway;
- 4 b. Defendant is strictly, jointly and severally liable to Plaintiff for costs incurred or  
5 to be incurred to remediate and abate the Releases or threatened Releases of any  
6 hazardous substances at or onto the the I & J Waterway;
- 7 c. Defendant is strictly, jointly and severally liable to Plaintiff for costs, expenses  
8 and attorney fees;
- 9 d. Such other and further relief as the Court deems just and proper.

10 DATED this 7th day of January, 2021.

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13 MARK J. DAVIS, WSBA #51262  
14 CLARK J. DAVIS, WSBA #11635  
Attorneys for Plaintiff

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